

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Cause No. 1:19CR00087 SNLJ

ROBBIE DONYEL HUDSON,

Defendant.

## CHANGE OF PLEA HEARING

BEFORE THE HONORABLE STEPHEN N. LIMBAUGH, JR.  
UNITED STATES DISTRICT JUDGE

OCTOBER 15, 2019

## APPEARANCES

For Plaintiff:

Mr. Timothy J. Willis  
Assistant United States Attorney  
Rush Hudson Limbaugh, Sr. Courthouse  
555 Independence, 3rd Floor  
Cape Girardeau MO 63703

**For Defendant:**

Ms. Jennifer L. Booth  
Assistant Federal Public Defender  
325 Broadway, 2nd Floor  
P.O. Box 2043  
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Reported by:

Alison M. Garagnani, CCR #475, CSR, RMR, CRR  
Official Court Reporter  
United States District Court  
555 Independence, Room 3100  
Cape Girardeau, MO 63703  
(573) 331-8832

1 (THE PROCEEDINGS BEGAN AT 2:23 P.M.)

2 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT AND WITH  
3 THE DEFENDANT PRESENT:)

4 THE COURT: The next case is the United States of  
5 America versus Robbie D. Hudson. The Case Number is  
6 19-CR-087.

7 The Government is present by Assistant United  
8 States Attorney Tim Willis.

9 The Defendant is present by counsel Jennifer Booth.

10 And are you Robbie D. Hudson?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Is there an announcement then?

13 MS. BOOTH: Yes, Your Honor, Mr. Hudson plans to  
14 plead guilty to the indictment today.

15 This is an open plea. I believe some facts were  
16 previously submitted to Chambers that both parties had agreed  
17 on. That is no longer the case.

18 But Mr. Hudson is prepared to make a factual basis  
19 today that we believe will meet the elements of the offense  
20 that he is pleading to.

21 THE COURT: without any kind of plea agreement?

22 MS. BOOTH: Yes, sir. No plea agreement.

23 THE COURT: Do you wish to plead guilty then?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: In that case I'll ask you a number of

1       questions about your willingness and desire to enter your  
2       plea. So if at any time you don't understand my questions,  
3       just let me know that, and I'll explain the questions  
4       further: Okay?

5                     THE DEFENDANT: Yes, sir.

6                     THE COURT: First be sworn in by the Court Clerk.

7                                     ROBBIE DONYEL HUDSON,

8       being produced and sworn, testified as follows:

9                     THE COURT: Now that you've been sworn on your oath  
10      do you understand that your answers to my questions are  
11      subject to the penalties of perjury if you do not answer  
12      truthfully? Do you understand that?

13                     THE DEFENDANT: Yes, sir.

14                     THE COURT: How old are you?

15                     THE DEFENDANT: 39.

16                     THE COURT: How much education do you have?

17                     THE DEFENDANT: To ninth grade.

18                     THE COURT: Can you read and write?

19                     THE DEFENDANT: Yes, sir.

20                     THE COURT: Are you in good health today?

21                     THE DEFENDANT: Yes, sir.

22                     THE COURT: Have you had any drugs, medication or  
23      alcohol in the last 24 hours?

24                     THE DEFENDANT: No, sir.

25                     THE COURT: Do you have any kinds of illnesses,

1       injuries, infirmities of any kind that require a physician, a  
2       psychiatrist or any other kind of doctor?

3                  THE DEFENDANT: Just for my shoulder.

4                  THE COURT: Tell me about that.

5                  THE DEFENDANT: It's like I got a brace in my hand  
6       when I use it.

7                  THE COURT: You need to speak up a little bit.

8                  THE DEFENDANT: My right hand and my right  
9       shoulder.

10                 MS. BOOTH: Your Honor, Mr. Hudson, while in the  
11       jail, injured his right hand and right shoulder, so he's  
12       advising the Court that's the only infirmity he has today,  
13       but I don't believe it affects his ability to go forward  
14       today.

15                 THE COURT: Okay. Are you taking any medications  
16       for that or treatment or what?

17                 THE DEFENDANT: I have already had treatment for  
18       it.

19                 THE COURT: And what was that? You saw a doctor, I  
20       guess?

21                 THE DEFENDANT: Yes.

22                 THE COURT: Okay. The reason I'm asking these  
23       questions is I have to make sure there's nothing about your  
24       mental or physical condition that is in any way affecting  
25       your decision to enter this plea of guilty. Do you

1 understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: So you can assure me that's the case.

4 There's nothing about this problem that's affecting your  
5 decision; is that right?

6 THE DEFENDANT: Yes, sir, I can assure you.

7 THE COURT: So are the medications working  
8 properly?

9 THE DEFENDANT: They didn't give me any medication.

10 THE COURT: Oh, okay. So you still have pain, or  
11 what's the deal?

12 THE DEFENDANT: Yes, in my shoulder.

13 THE COURT: Okay. So do you need some more  
14 treatment, some more pain or what?

15 THE DEFENDANT: Yes.

16 THE COURT: I mean, more consultation with a doctor  
17 or what?

18 THE DEFENDANT: Yes. For my shoulder I do.

19 THE COURT: I'll ask the marshals to look into that  
20 for you.

21 THE DEFENDANT: Thank you.

22 THE COURT: So do you have any other kinds of  
23 injuries, infirmities, illnesses, anything like that that  
24 requires a physician, a psychiatrist or any other kind of  
25 doctor?

1                   THE DEFENDANT: No, sir.

2                   THE COURT: So I take it that your mind is clear,  
3 you're feeling well, and you're ready to proceed; is that  
4 right?

5                   THE DEFENDANT: Yes, sir.

6                   THE COURT: Because this is a criminal case you're  
7 entitled to effective representation from a lawyer at each  
8 stage of the proceedings against you. Do you understand  
9 that?

10                  THE DEFENDANT: Yes, sir.

11                  THE COURT: So with that in mind I'll ask you are  
12 you satisfied with the way your lawyer has handled your case?

13                  THE DEFENDANT: Yes, sir.

14                  THE COURT: Has she investigated the case to your  
15 satisfaction?

16                  THE DEFENDANT: I don't think all the way.

17                  THE COURT: What's that?

18                  THE DEFENDANT: I think like some of it -- I don't  
19 think the whole thing was investigated properly all the way.

20                  THE COURT: I'm talking about your lawyer. Has  
21 she investigated the case to your satisfaction?

22                  THE DEFENDANT: That's what I'm talking about.

23                  THE COURT: Well, okay, what's the problem?

24                  THE DEFENDANT: Well, she told me that there would  
25 be -- I guess at sentencing it's going to be discussed at

1 sentencing, I guess.

2 THE COURT: what's that?

3 THE DEFENDANT: The rest of it.

4 THE COURT: The what?

5 THE DEFENDANT: The rest of what I have to say is  
6 going to be at sentencing, I guess, it's supposed to be.

7 MS. BOOTH: How about I explain it to the Judge?

8 THE DEFENDANT: Okay.

9 MS. BOOTH: Your Honor, what Mr. Hudson is speaking  
10 about is at sentencing some important issues are going to  
11 come to play as to whether or not certain guidelines apply in  
12 this case.

13 THE COURT: Okay.

14 MS. BOOTH: Whether or not he's entitled to the  
15 safety valve and whether or not substantial assistance has  
16 been provided to the Government. And I'm not finished in my  
17 investigation on those issues. So I believe that's what  
18 Mr. Hudson is speaking about.

19 But as to the investigation that leads up to the  
20 guilty plea I am complete in that investigation.

21 THE DEFENDANT: Yes. That's more accurate.

22 THE COURT: Is there anything that's not accurate  
23 about what she said?

24 THE DEFENDANT: No.

25 THE COURT: So is that your only gripe or

1                   complaint?

2                   THE DEFENDANT: Yes.

3                   THE COURT: And what else do you want her to do? I

4 mean --

5                   THE DEFENDANT: Well --

6                   THE COURT: She said she's not finished with that

7 part.

8                   THE DEFENDANT: Well, that's about all right there.

9                   THE COURT: What's that?

10                  THE DEFENDANT: That's about all right there.

11                  THE COURT: I still can't hear you. Speak up just  
12 a little bit.

13                  THE DEFENDANT: That was about all.

14                  THE COURT: Okay. All right. And so, as I  
15 understand it, that doesn't have anything to do with your  
16 guilt or innocence on the charge; right?

17                  THE DEFENDANT: Yes.

18                  THE COURT: It has just more to do about your  
19 background; is that right?

20                  THE DEFENDANT: No. It was about the charges and  
21 everything else and about the plea agreement that was made  
22 with someone else.

23                  THE COURT: Do you want to fill this in a little  
24 bit more? I don't know what's going on.

25                  MS. BOOTH: Yes, Your Honor. Again, Mr. Hudson,

1       we anticipate that there are going to be some important  
2       issues that come up at sentencing. And Mr. Hudson very much  
3       wanted me to complete all my investigation as to those issues  
4       prior to his guilty plea.

5               I have not been able to do that. But that was  
6       part and parcel because of my legal judgment that those  
7       issues are separate from guilt or innocence as to what he's  
8       pleading guilty to today. Those issues are specifically  
9       reserved for sentencing.

10              So even if I had found favorable evidence regarding  
11       those potential sentencing issues, that favorable evidence  
12       would not have changed whether or not a guilty plea would be  
13       entered here today. Again, that information solely is going  
14       to go to sentencing factors.

15              But I do understand Mr. Hudson's point. He was  
16       hoping I would have had all that investigation done before he  
17       even pleads guilty so that he'd have a better idea of knowing  
18       what type of guideline would apply, whether substantial  
19       assistance would be given and whether or not the safety valve  
20       would apply.

21              THE COURT: Well, I want to make sure his plea is  
22       voluntarily and knowingly made. And so maybe we should  
23       continue the case for a while. I don't know.

24              THE DEFENDANT: My guilty plea is voluntary.

25              THE COURT: Okay. You just want to challenge the

1       matters that pertain to sentencing; is that right?

2           THE DEFENDANT: Yes, sir.

3           THE COURT: And you want to go ahead and plead  
4 guilty today then?

5           THE DEFENDANT: Yes, sir.

6           THE COURT: You don't have any problems with your  
7 lawyer then?

8           THE DEFENDANT: No, sir.

9           THE COURT: Okay. Now, it's a little odd that you  
10 don't have a plea agreement. What's that about? I mean,  
11 99 percent of the cases have a plea agreement, and I'm  
12 concerned about that.

13           THE DEFENDANT: Well, in certain parts of it where  
14 it said that I swerved towards the police officer I never  
15 swerved towards the police officer to create no kind of a  
16 substantial risk to him or danger to him, and that was in the  
17 plea agreement. And by that being in the plea agreement  
18 alone that I read it and the --

19           THE COURT: Well, let me just interrupt you. If  
20 that's not part of the elements of the offense, that doesn't  
21 need to be in the plea agreement; right?

22           THE DEFENDANT: Yes.

23           THE COURT: Well, I'm talking to your lawyer.

24           MS. BOOTH: Yes, sir. That's accurate. That  
25 does not need to be in the plea agreement. Mr. Willis and I

1 tried to work this out. And he worked very hard to produce  
2 a plea agreement that was redacted that Mr. Hudson and I  
3 found acceptable, but it was not.

4 And so we would like to not plead with the plea  
5 agreement here today. And Mr. Hudson and I have talked  
6 about all the ramifications of that and that it's best always  
7 to have a plea agreement, but we don't have one here today.

8 THE COURT: Yeah. You may be at a disadvantage  
9 about that. That's very unusual. Do you understand?

10 THE DEFENDANT: Yes, sir. It was due to the fact  
11 that I never swerved or went towards the officer.

12 THE COURT: I understand, but my point is that  
13 doesn't have to be part of the plea agreement. You can  
14 litigate that and challenge that at a later time.

15 THE DEFENDANT: That's what I tried to tell  
16 Ms. Booth, I guess, but out of me thinking it was in there,  
17 and I that -- due to the fact that that was in there I would  
18 think that I would get more time for something that was said  
19 that I never did.

20 THE COURT: I understand, but --

21 MS. BOOTH: Your Honor, we did -- Mr. Willis drew  
22 up a version of the plea agreement that alleged facts as to  
23 the drug offense. And in the plea agreement it said that we  
24 would reserve for a later date whether or not Mr. Hudson  
25 should receive any type of adjustment for recklessly or

1       knowingly and purposely attempting to cause injury to a  
2       police officer during resisting arrest.

3               But even with that language contained in the plea  
4       agreement in that the parties would reserve that issue for  
5       sentencing Mr. Hudson -- it made him very uncomfortable that  
6       that language was even in the plea agreement.

7               THE COURT: Okay. Well, then, Mr. Hudson, what  
8       your lawyer said takes care of your concern completely. And  
9       I just want to make sure you know what you're doing, because  
10      it's --

11               THE DEFENDANT: No, sir, I'm not all the way.

12               THE COURT: I think you're at a disadvantage to not  
13      have a plea agreement.

14               THE DEFENDANT: Yes, sir. And that's what I was  
15      thinking.

16               THE COURT: So do you want to go forward anyway?

17               THE DEFENDANT: Not if I'm going to be at a  
18      disadvantage I don't want to.

19               THE COURT: Do you want to talk with your client a  
20      little bit more?

21               MS. BOOTH: Yes, sir. I don't know if the Court  
22      has any other cases today. We have that plea agreement that  
23      we at one time looked at, or we just simply can continue this  
24      matter until next week, Your Honor.

25               THE COURT: Or even tomorrow. I'll try to make

1 myself available.

2 MS. BOOTH: All right. I think if we can just  
3 continue it until next week.

4 THE COURT: I'll be out next week.

5 MS. BOOTH: Or, sir, the rest of this day is  
6 there --

7 THE COURT: I have tomorrow, and I have later this  
8 afternoon.

9 MS. BOOTH: Sir, if I could -- I think that we  
10 could possibly proceed today if I can just have a little time  
11 to talk to Mr. Hudson, put him at the end of your docket,  
12 because we actually have that.

13 THE COURT: That's fine. I'll take up another  
14 case. And can you accommodate them, Mr. Marshal?

15 MARSHAL: Yeah. It will take us a few minutes to  
16 take him downstairs and bring up the next case, but it won't  
17 take but a couple of minutes.

18 THE COURT: Okay. Why don't we try that.

19 Do you want to do that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. Fine.

22 (A discussion was held off the record.)

23 (Proceedings stood in temporary recess.)

24 THE COURT: All right. Mr. Hudson, after -- I see  
25 that after you talked at some length with your lawyer you've

1       decided to go with a formal guilty plea agreement after all;  
2       is that right?

3                  THE DEFENDANT: Yes, sir.

4                  THE COURT: And have you had plenty of time to talk  
5       with her about this?

6                  THE DEFENDANT: Yes, sir.

7                  THE COURT: And I take it that this is the same  
8       agreement that -- roughly the same agreement that you had  
9       earlier; is that right? Roughly?

10                 THE DEFENDANT: There was two different ones, but  
11      that's the newer one right there.

12                 THE COURT: Okay. Well, I'll get to that in a  
13      minute. So -- and the way we left off is I was asking you  
14      about your lawyer's representation, and you're satisfied with  
15      the way she's handled your case now at this time point;  
16      right?

17                 THE DEFENDANT: Yes.

18                 THE COURT: So by pleading guilty you're giving up  
19      your right to trial by jury. Are you sure that's what you  
20      want to do?

21                 THE DEFENDANT: Yes, sir.

22                 THE COURT: If we were to have a trial, you'd be  
23      presumed innocent. The Government would have to prove you  
24      guilty beyond a reasonable doubt, and you would not have to  
25      prove your own innocence: Do you understand?

1                   THE DEFENDANT: Yes, sir.

2                   THE COURT: But if we were to have a trial, the  
3 Government would have to bring its witnesses in to court to  
4 testify in your presence, and your lawyer would be allowed to  
5 cross-examine those witnesses.

6                   And then, of course, you could take the witness  
7 stand yourself and testify and tell your side of the story,  
8 and you could call witnesses in your own behalf. You know  
9 that too, don't you?

10                  THE DEFENDANT: Yes, sir.

11                  THE COURT: Then if we were to have a trial and you  
12 decided not to testify, no one could force you or make you  
13 testify against yourself. And if you decided not to  
14 testify, the jury would not be allowed to hold it against you  
15 that you decided not to testify. Do you understand?

16                  THE DEFENDANT: Yes, sir.

17                  THE COURT: So let me ask you again with all that  
18 in mind are you sure you want to give up your right to have a  
19 jury trial by pleading guilty?

20                  THE DEFENDANT: Yes, sir.

21                  THE COURT: Has anyone forced you, coerced you or  
22 threatened you in any manner to get you to plead guilty?

23                  THE DEFENDANT: No, sir.

24                  THE COURT: Okay. Now, we've got this new guilty  
25 plea agreement. Have you read the agreement?

1                   THE DEFENDANT: Yes, I have.

2                   THE COURT: Have you gone over it in detail with  
3 your lawyer?

4                   THE DEFENDANT: Yes, sir.

5                   THE COURT: Has she explained the contents of the  
6 agreement in detail to you?

7                   THE DEFENDANT: Yes, sir.

8                   THE COURT: And do you understand the contents of  
9 the agreement?

10                  THE DEFENDANT: Yes, sir.

11                  THE COURT: Is there anything in here that you do  
12 not understand?

13                  THE DEFENDANT: No, sir.

14                  THE COURT: Have any promises been made by anyone  
15 to get you to plead guilty other than the promises set out in  
16 this agreement?

17                  THE DEFENDANT: No, sir.

18                  THE COURT: So this is the complete, full and total  
19 agreement; right?

20                  THE DEFENDANT: Yes, sir.

21                  THE COURT: Do you understand if I accept the  
22 agreement, you will not be allowed to withdraw your plea of  
23 guilty? Okay?

24                  THE DEFENDANT: Yes, sir.

25                  THE COURT: I'll ask your lawyers have any plea

1 offers been made by the Government that you have not in turn  
2 conveyed to your client?

3 MS. BOOTH: No, sir.

4 THE COURT: I want to ask also about this plea  
5 agreement. You said it's the second agreement. It's one  
6 that's had revisions to it. Do you want to explain that?

7 MS. BOOTH: Yes. Sir, the first plea agreement  
8 had the parties agreeing that plus six would apply under the  
9 guidelines for the official victim guideline. That was the  
10 first agreement. And, of course, Mr. Hudson disputes that he  
11 resisted arrest in any way that caused any type of possible  
12 assault to the arresting officer.

13 So now in our new revised agreement we reserve the  
14 right to litigate that issue at sentencing.

15 THE COURT: Is that the only thing then in it?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Is that right?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. I see that you and the lawyers  
20 have signed the agreement on the bottom of page 10 and at the  
21 top of 11; is that right too?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you have any questions about it?

24 THE DEFENDANT: No, sir.

25 THE COURT: Okay. And that's the only change.

1 You had read and reviewed in detail the earlier plea  
2 agreement without the change; right?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: So -- okay. Do you have any questions  
5 about it?

6 THE DEFENDANT: No, sir.

7 (PURSUANT TO LOCAL RULE 13.05, A CONFERENCE WAS  
8 HELD ON THE RECORD AND PLACED UNDER SEAL, AFTER WHICH THE  
9 FOLLOWING PROCEEDINGS CONTINUED IN OPEN COURT:)

10 THE COURT: Okay. I see on page 6, Paragraph 7  
11 that is entitled waiver of Appeal and Post-Conviction Rights  
12 subparagraph a(1) addresses the non-sentencing issues. What  
13 this says is that by pleading guilty you are waiving or  
14 giving up your right to bring an appeal in this case as to  
15 the non-sentencing issues. That is to everything that has  
16 transpired in the case up to and through this guilty plea  
17 hearing this afternoon, including all the rulings on all the  
18 pretrial motions. Do you agree with that part of it? Do you  
19 understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you have any questions about that?

22 THE DEFENDANT: No, sir.

23 THE COURT: Okay. Then the second subparagraph is  
24 about the sentence itself. What this says is if I impose a  
25 sentence against you that's within or below the sentencing

1 Guidelines range, if that happens, then you'll waive your or  
2 give up your right to appeal even the sentence itself. Do  
3 you understand that too?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: So the only thing that you could appeal  
6 at that time would be the determination about your criminal  
7 history. That's your criminal record and nothing else. Do  
8 you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Your lawyer has explained this to you;  
11 right?

12 THE DEFENDANT: Yes.

13 THE COURT: Again, do you have any questions?

14 THE DEFENDANT: No, sir.

15 THE COURT: And has she also explained to you the  
16 Sentencing Guidelines?

17 MS. BOOTH: Sir, we actually do have an issue.  
18 Mr. Hudson understands that he is able to -- it's our  
19 understanding he'll be able to appeal any sentencing issue.  
20 For example, if for some reason it's deemed that he's not  
21 entitled to a substantial assistance 5K downward departure or  
22 he's not entitled to the safety valve relief, he would like  
23 the opportunity to be able to litigate that.

24 MR. WILLIS: May I have a moment with counsel?

25 THE COURT: Yes.

1                             (A discussion was held off the record.)

2                             MS. BOOTH: All right. Your Honor, we're ready to  
3 proceed as is.

4                             THE COURT: Do you have any questions about that  
5 then?

6                             THE DEFENDANT: No, sir.

7                             THE COURT: So your lawyer has explained to you the  
8 Sentencing Guidelines?

9                             THE DEFENDANT: Yes, sir.

10                            THE COURT: Okay. Let me go back to the  
11 sentencing and the waiver of appeal on that. Did I get it  
12 right or --

13                            MS. BOOTH: No, sir. Yes. As Mr. Hudson  
14 understands it, if the Court decides that the base level is  
15 what Mr. Hudson and I believe it would be, that's just simply  
16 the gram weight without any adjustments for any type of  
17 assault on a police officer. Should the Court sentence him  
18 in that guideline range he is not free to appeal that  
19 sentence.

20                            THE COURT: Okay.

21                            MS. BOOTH: That's essentially what we believe that  
22 paragraph indicates.

23                            THE COURT: Okay. Well, that's what it says, I  
24 think.

25                            MS. BOOTH: Is that a fair --

1 MR. WILLIS: I believe that's --

2 MS. BOOTH: -- assessment?

3 MR. WILLIS: Yes. I believe that's an accurate  
4 rendition.

5 MS. BOOTH: So that does leave us abandoning any  
6 type of appeal regarding a safety valve issue. If  
7 Mr. Hudson and I want to appeal some type of safety valve  
8 issue, the Government at this point is not being unfair, but  
9 they will not enter into this agreement, and then we go back  
10 to an open plea.

11 THE COURT: Okay. I see that it only affects the  
12 base offense level on the Criminal History category. That's  
13 the point.

14 MS. BOOTH: Yes, sir.

15 THE COURT: Yeah. Now, what did you say about an  
16 open plea?

17 MS. BOOTH: Sir, I don't believe that this  
18 paragraph would allow Mr. Hudson and I to appeal any safety  
19 valve issue. And I just spoke with Mr. --

20 THE COURT: I think it would, because that -- that  
21 would affect the base offense level and the Criminal History  
22 category, wouldn't it?

23 MR. WILLIS: Yes, sir.

24 THE COURT: So it's all rolled into the safety  
25 valve.

1                   MR. WILLIS: Yeah. I think the way this is written  
2 is if he ends up losing an argument in that respect, he can  
3 appeal.

4                   MS. BOOTH: Oh, all right. Okay.

5                   MR. WILLIS: I believe that's how that interprets.

6                   MS. BOOTH: All right. Then that's better. So,  
7 yes, so then we're fine with this paragraph.

8                   THE COURT: In that regard I've got the pretrial  
9 release report, and it does show he's got a felony conviction  
10 in St. Charles County in 2017 for possession of a controlled  
11 substance.

12                  MS. BOOTH: I believe point wise, Your Honor, he  
13 would be eligible for the safety valve, but then the safety  
14 valve also has issues regarding whether or not violence was  
15 used during the offense. So then we go back to the issue  
16 did Mr. Hudson use violence when resisting arrest on this  
17 offense. And --

18                  THE COURT: I understand that part, but why would  
19 he be eligible for the safety valve if he's got a felony  
20 conviction from two years ago?

21                  MS. BOOTH: Sir, because now under the First Step  
22 Act the points have increased.

23                  THE COURT: Oh, that explains it.

24                  MS. BOOTH: Four points is the cutoff for the  
25 safety valve now.

1                   THE COURT: Okay. We haven't had one of those yet.  
2 So I got it. So he might qualify then for it.

3                   MS. BOOTH: Yes, sir.

4                   THE COURT: We'll have to see.

5                   So, in any event, your lawyer has explained to you  
6 the Sentencing Guidelines; right?

7                   THE DEFENDANT: Yes, sir.

8                   THE COURT: And so you'll understand after your  
9 plea I'll get with the probation office, and we'll calculate  
10 the Sentencing Guidelines by using two factors. The first is  
11 your criminal history. That's your criminal record. And  
12 then the second is what we call the Total Offense Level for  
13 this offense. Those are the two factors that go into the  
14 calculation: Okay?

15                  THE DEFENDANT: Yes, sir.

16                  THE COURT: And then if you disagree with the  
17 calculation, you'll be allowed to challenge that  
18 determination. Do you understand?

19                  THE DEFENDANT: Yes, sir.

20                  THE COURT: And your lawyer has explained it;  
21 right?

22                  THE DEFENDANT: Yes, sir.

23                  THE COURT: Now, I do see on page 5 that the  
24 lawyers estimate the Total Offense Level is 29. And that  
25 was what it would be if the four-level enhancement applies?

1 No. No.

2 MR. WILLIS: I think it's -- it should indicate in  
3 the alternative there, Judge.

4 THE COURT: And 23 if it does not apply. What is  
5 3A1.2(c)(1)?

6 MS. BOOTH: That's the official victim adjustment  
7 plus six points for using --

8 THE COURT: oh, that's the plus six adjustment?

9 MR. WILLIS: Yes.

10 THE COURT: okay. That's right. That's the plus  
11 six adjustment?

12 MR. WILLIS: Yes, sir. we think it's either 23 or  
13 29 depending on how it goes on there.

14 THE COURT: okay. I got it. I got it.

15 So, anyway, the lawyers estimate it's 29 or 23  
16 depending on that plus six-level adjustment, which is the  
17 reason that you didn't want an agreement in the first place.  
18 You want to litigate that; right?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: So, anyway, it may be 29. It may be  
21 23. Something lower. Something above. Something in  
22 between. But, again, if you disagree, you can challenge that  
23 determination: okay?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And that's what I think is going to

1 happen apparently.

2 MR. WILLIS: Yes, sir. From my understanding.

3 THE COURT: Okay. So I need to tell you too that  
4 the Sentencing Guidelines, whatever they turn out to be, are  
5 simply guidelines. And by that I mean I can impose a  
6 sentence against you that's above the guidelines or a  
7 sentence that's below the guidelines. Do you understand that  
8 too?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: So what I am bound by, though, is the  
11 statutory penalty. That's Paragraph 5 at the bottom of  
12 page 3 and at the top of page 4. For this offense the  
13 penalty is up to 40 years in prison, a fine of up \$5 million  
14 or a combination of imprisonment and fine.

15 After your release, there would be a period of  
16 supervised release of at least 4 years. And there's also a  
17 mandatory minimum term of imprisonment of at least five  
18 years. Do you understand all that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: So I'm going to consider the full range  
21 of punishment from 5 years minimum to 40 years maximum. And  
22 then the sentence to be imposed will be in my discretion  
23 within that range of punishment. Do you understand that too?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: So with that in mind has anyone told

1 you or promised you what sentence you'll receive in the case?

2 THE DEFENDANT: No, sir.

3 THE COURT: I'll ask the prosecutor to summarize  
4 the evidence that the Government would prove if the case were  
5 to go to trial.

6 MR. WILLIS: Your Honor, if the matter proceeded to  
7 trial, the United States is in a position to prove the  
8 following things beyond a reasonable doubt. On January 15th  
9 of 2019 at approximately 3:00 a.m. in Pemiscot County a  
10 deputy observed two vehicles parked in the lot of the Hayti  
11 Heights City Hall. As the deputy approached to investigate,  
12 one of those vehicles drove off.

13 The deputy made contact with the driver of the  
14 remaining vehicle who was identified as the Defendant, Robbie  
15 Donyel Hudson. As the officer was speaking with Mr. Hudson,  
16 he noticed an odor of marijuana coming from the car.  
17 Mr. Hudson was requested to step out of the car, and the  
18 officer attempted to perform a frisk for weapons. He felt a  
19 hard object in the pocket of Hudson's hoodie, which the  
20 officer believed to be a weapon.

21 Mr. Hudson began to distance himself from the  
22 officer, and Hudson's passenger fled on foot. Mr. Hudson  
23 then reentered his vehicle and drove off. He fled a short  
24 distance and entered a house with the officer in pursuit. An  
25 individual in the house hindered the officer's entry allowing

1       Mr. Hudson time to hide. Mr. Hudson voluntarily surrendered  
2 to officers shortly thereafter and was taken into custody and  
3 was advised of his rights. The deputies obtained consent  
4 from the owner to search the residence. Officers located in  
5 a closet what was tested at the Missouri State Highway Patrol  
6 crime lab and determined to be 240.93 grams of a substance  
7 containing methamphetamine.

8           Mr. Hudson was advised of his Miranda Rights, and  
9 he agreed to waive those rights and to speak with officers.  
10 Mr. Hudson admitted that he had ran because he had  
11 methamphetamine in the pocket of his hoodie where the officer  
12 had believed he felt a weapon. Mr. Hudson admitted that  
13 once he had reached the residence that he had thrown the  
14 methamphetamine in the closet.

15           And that ends the stipulated facts.

16           THE COURT: All right. Have you heard the  
17 statements from the prosecutor?

18           THE DEFENDANT: Yes, sir.

19           THE COURT: Is everything he said true and correct?

20           THE DEFENDANT: No, not all of it is true.

21           THE COURT: What's that?

22           THE DEFENDANT: No, not all of it is true.

23           The only reason why I pulled off in the car is  
24 because the officer -- the passenger -- we had one vehicle --  
25 the passenger was in a car, and when the officer pulled up in

1       the car, he drew his gun on the other -- the other -- the guy  
2       that was in the car that pulled up, because he was drunk and  
3       belligerent in the car, and that's the only reason I pulled  
4       off. And I told the officer that because he pointed the gun  
5       right at me trying to -- angling it at the other guy.

6                  THE COURT: Yeah, I understand, but the only thing  
7       here it says is that you drove off, not why.

8                  THE DEFENDANT: Yeah. Well, I just wanted to let  
9       you know the reason why that I did that.

10                 THE COURT: Okay. Yeah, okay. But that's -- so  
11       you admit this. It's that you just want to add some more to  
12       it; right?

13                 THE DEFENDANT: Yes.

14                 THE COURT: Okay. Well, that will be for  
15       sentencing: okay?

16                 THE DEFENDANT: Okay.

17                 THE COURT: But you admit what he said, though?

18                 THE DEFENDANT: Yes, sir.

19                 THE COURT: Okay. No question about that part, is  
20       there?

21                 THE DEFENDANT: No, sir.

22                 THE COURT: I'm going to go through the elements.  
23       So you admit that you did all those acts that he mentioned?

24                 THE DEFENDANT: Yes.

25                 THE COURT: Okay. So I am going to go through the

1 elements with you specifically. That's Paragraph 3 on  
2 page 2. Do you admit that you possessed methamphetamine,  
3 that you knew it was methamphetamine, and that you intended  
4 to distribute some or all to another person or persons. Do  
5 you admit that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you also admit that it was more than  
8 50 grams of methamphetamine?

9 THE DEFENDANT: Yes.

10 THE COURT: Are you pleading guilty, then, because  
11 you are guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Based on your sworn testimony, the  
14 Court finds that you're competent to enter the plea of  
15 guilty, that you're doing so freely, knowingly and  
16 voluntarily.

17 Further, that you have admitted the essential  
18 elements of the crime charged. Therefore, I find you guilty  
19 as charged.

20 I accept the plea agreement. I'll order a  
21 presentence investigation. And I need to go off the record.

22 (A discussion was held off the record.)

23 THE COURT: Your sentencing date will be Tuesday,  
24 January 21st at 1:20 p.m. And you'll need to speak with the  
25 probation office to begin the preparation of the presentence

1 report.

2 Do you have any questions then?

3 THE DEFENDANT: No, sir.

4 THE COURT: Okay. And then, like we discussed, at  
5 sentencing we can litigate all the questions about the  
6 circumstances after the stop.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. Anything further from the  
9 Government?

10 MR. WILLIS: No, sir, Your Honor.

11 THE COURT: For the Defendant?

12 MS. BOOTH: No, sir. Thank you.

13 THE COURT: Okay. I'll see you back here Tuesday,  
14 January 21st at 1:20 p.m. Okay. We'll be in recess.

15 (PROCEEDINGS CONCLUDED AT 4:00 P.M.)

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1  
2                   C E R T I F I C A T E  
3

4                   I, Alison M. Garagnani, Registered Merit Reporter  
5 and Realtime Reporter, hereby certify that I am a duly  
6 appointed official Court Reporter of the United States  
7 District Court for the Eastern District of Missouri.

8                   I further certify that the foregoing is a true and  
9 accurate transcript of the proceedings held in the  
10 above-entitled case and that said transcript is a true and  
11 correct transcription of my stenographic notes.

12                  I further certify that this transcript contains  
13 pages 1 through 31 inclusive and that this reporter takes no  
14 responsibility for missing or damaged pages of this  
15 transcript when same transcript is copied by any party other  
16 than this reporter.

17                  Dated Cape Girardeau, Missouri, this 13th day of  
18 July, 2020.

19  
20  
21  
22 -----  
23 /s/Alison M. Garagnani  
24 Alison M. Garagnani, CCR, CSR, RMR.  
25 Official Court Reporter